



BONNIE M. DUMANIS
SAN DIEGO COUNTY DISTRICT ATTORNEY

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August 6, 2010

Via Messenger

Presiding Judge Kevin A. Enright
San Diego County Superior Court
220 West Broadway
San Diego, California 92101

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AUG 12 2010
SAN DIEGO
COUNTY GRAND JURY

**Re: Response to 2009/2010 Grand Jury Report:
"Medical Marijuana in San Diego"**

Dear Judge Enright:

The 2009/2010 San Diego County Grand Jury investigated issues surrounding medical marijuana in the County, and wrote a report detailing the facts developed in the investigation and making a series of 11 findings and 18 recommendations to various governmental entities, including the District Attorney. As required by Penal Code § 933, I write to respond to the Grand Jury's findings, Numbers 1 – 3 and recommendations 10-107 and 10-108, which involve matters under the control of the District Attorney.

FINDINGS:

Finding 1: The District Attorney's Office has not published guidelines for the operation of legal medical marijuana cooperatives and collectives in San Diego County, which would address the concerns of operators of those programs who are trying to comply with State law.

The District Attorney agrees with this finding. It is worth noting though, that in the days prior to the release of the Grand Jury's Report on Medical Marijuana, the County Board of Supervisors did enact both a zoning ordinance and a regulatory ordinance that offer very detailed instructions for the operation of medical marijuana-related facilities in the unincorporated areas of San Diego County. The District Attorney's Office was involved in the development of this legislation.

Finding 2: There is currently no forum through which the operators of legitimate medical marijuana collectives and cooperatives could engage in dialogue with representatives of the District Attorney's Office on a regular basis.

The District Attorney agrees in part with this finding. It is true that there is no “forum” or regularly scheduled meeting where representatives of the District Attorney’s Office meet with the public to answer medical marijuana-related questions. However, representatives of the District Attorney’s Office regularly receive inquiries from members of the public who have medical marijuana-related questions. While we are prohibited from offering legal advice, we do our best to provide as much information as we can to these individuals.

Finding 3: There are no clear and uniform guidelines for law enforcement personnel in San Diego County which would protect the rights of legitimate qualified medical marijuana patients.

The District Attorney disagrees with this finding. There is a uniform statewide statutory scheme that defines what conduct is legal for qualified medical marijuana patients and their designated caregivers. That scheme is found in Health and Safety Code § 11362.5, the Compassionate Use Act of 1996, and in Health and Safety Code §§ 11362.7 – 11362.9, the Medical Marijuana Program Act of 2003.

Additionally, in August 2008 the California Attorney General published *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, which is intended to:

1. [E]nsure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets;
2. [H]elp law enforcement agencies perform their duties effectively and in accordance with California law, and
3. [H]elp patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law.¹

Lastly, as noted above, the San Diego County Board of Supervisors recently enacted both a regulatory ordinance and a zoning ordinance (County Ordinance numbers 10060 and 10061, respectively) which govern the location and operation of medical marijuana collective facilities in the unincorporated areas of San Diego County.

RECOMMENDATIONS:

Recommendation 10-107: In consultation with the San Diego County Sheriff’s Department and officials of the Police Departments of the Cities of Carlsbad, Chula Vista, Coronado, El Cajon, Escondido, La Mesa, National City, Oceanside and San Diego, publish a position paper which contains guidelines for the operation of legal medical marijuana cooperatives and collectives in San Diego County.


¹ Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, p. 1

The District Attorney disagrees with this recommendation. The adoption of guidelines for the operation of medical marijuana cooperatives and collectives is a legislative function which should be undertaken by the elected City Councils in each of the above municipalities should they decide that having such guidelines is in the best interest of their citizens. As models for such guidelines, I recommend San Diego County Ordinances 10060 and 10061, since the District Attorney's Office was consulted during their formative stages.

Recommendation 10-108: In cooperation with the San Diego County Sheriff's Department, establish a Medical Marijuana Advisory Council as a forum through which the operators of legitimate medical marijuana collectives and cooperatives, as well as patients and members of the public, could engage in dialogue with representatives of County law enforcement agencies on a regular basis.

The District Attorney disagrees with this recommendation. Unfortunately, the de facto function of such a forum would be to provide legal advice to members of the public, which we are prohibited by law from doing. Representatives of the District Attorney's Office will continue to answer general medical marijuana questions directed to this Office by members of the public, as we have in the past.

Sincerely,



BONNIE M. DUMANIS
San Diego County District Attorney